

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**UNITED STATES OF AMERICA**  
**Plaintiffs**

**vs.**

**JAY OMAR RESTO RIVERA (1)**  
**Defendant**

**CRIMINAL NO. 16-801 (CCC)**

**SENTENCING MEMORANDUM**

**TO THE HONORABLE COURT:**

**COMES NOW** defendants, **JAY OMAR RESTO RIVERA (1)**, thru his attorney, and states and prays that:

1. The Sentencing Hearing in this case is scheduled for This Friday, August 24, 2018 at 1:15pm. See docket entry 65.

2. We have received and reviewed the Pre-Sentence Report in this case and would like to express the reasons why we are respectfully requesting that Mr. Resto Rivera be sentenced to the terms of the Plea Agreement, due to the following circumstances that will be described below.

**THE OFFENSE CONDUCT AND PLEA AGREEMENT**

3. Mr. Resto Rivera was indicted in a One Count Indictment charging a Carjacking with serious bodily injury (18 USC §2119(2)). The parties, after long conversations and negotiations agreed upon a Plea Agreement to dispose of this matter without having to go to Trial and expose the victim to any more emotional turmoil.

4. The parties took into consideration all the facts of this case and included all enhancements that were applicable. This Plea Agreement did not sugarcoat the facts of the case.

5. The parties agreed to recommend to this Honorable Court that Mr. Resto Rivera should be sentenced to a term of imprisonment of the middle range of a Total Offense Level of 30, or 109 months of imprisonment.

6. Mr. Resto Rivera is a first-time offender and has no criminal history points which places him in a Criminal History Category of I.

#### **MR. RESTO'S ACCEPTANCE OF RESPONSIBILITY**

7. Mr. Resto Rivera is a 20-year-old young man who accepted full responsibility for his actions committed when he was just an ignorant 18 year old.

8. Mr. Resto made a very, very serious and awful mistake in his life. For his mistake, he is more than repentant and remorseful having spent and pending to spend a long term of imprisonment in his most formative young adult years.

9. Mr. Resto Rivera is now facing the loss of his freedom and family for his voluntary actions, having admitted and accepted complete responsibility them. He expressed being involved in this act and is aware of the huge mistake he has made. He does not want to live the rest of his life in jail and is using this experience as the biggest life lesson he has had. This process has taught him to have more respect for the law, for himself and for his family.

10. Mr. Resto Rivera's incarceration has shown him that committing illegal acts, even while being an immature minor, are punishable and have consequences. He has issues that need to be dealt with by mental health professionals.

## **SECTION 3553(A) FACTORS**

11. As this Honorable Court is aware, sentencing courts are directed pursuant to the sentencing provisions of Title 18 U.S.C. § 3553 et seq., to impose a sentence that is “*sufficient, but not greater than necessary.*” The court should consider various factors when determining the particular sentence to be imposed. Section 3553, of Title 18 of the United States Code (18 USC §3553), states “*the need for the sentence imposed (a) reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense ...*”.

## **HISTORY AND CHARACTERISTICS OF THE DEFENDANT**

12. The history and characteristics of Mr. Jay Omar Resto Rivera have been extensively discussed in the Presentence Report. Nevertheless, it should be highlighted that before the Court is a 20-year-old young man who is totally regretful for his involvement in these acts and who has spent the last year and a half in jail for this crime. Mr. Resto Rivera has accepted full and timely responsibility for his actions as demonstrated in the PSR and as also evidenced by his plea of guilty. The Plea Agreement contains all of the applicable enhancements and he admits that they are applicable. This is a sign of his willingness to accept responsibility for his actions.

13. Mr. Resto Rivera is a young man, who only studied until 10<sup>th</sup> grade. He was raised by his mother with almost no support at all from his father. As of today he has no relationship with his father except for sporadic instances where they may see each other on the street and they do nothing more than say hi to each other. This lack of a parental figure has affected him emotionally even though he is not willing or does not show much emotion when this matter is addressed. Nevertheless, Mr. Resto Rivera describes his

mother as having been always there for him as she has continued to do so while he has been incarcerated.

14. Mr. Resto Rivera consumed marijuana since he was only nine (9) years old. This is an addiction he has had to deal with for a little over a decade. He has made some wrong decisions under the influence, like leaving school, hanging out with the wrong friends and eventually including the facts of this case. He recognizes that he needs treatment and is now open to any drug abuse treatment that this Honorable Court may recommend to the BOP to provide him with. He wants to start a new life, once he culminates serving his sentence and doesn't want to commit any other crime.

15. Since his incarceration, he has learned to be completely repentant because his criminal behavior has denied him the opportunity to be with his family and to continue working and progressing in life. He has expressed his desire to learn a trade while incarcerated and does not want to become a burden to society.

16. Mr. Resto Rivera has to serve a lengthy time of imprisonment, but we should remember that he is also a young man, who committed this crime when he was only eighteen (18) years old. Once he finished serving his term of imprisonment, he has a life to accomplish and which will be harder on him than others because he will have a criminal record that will close many doors in his life.

**SERIOUSNESS OF THE OFFENSE, RESPECT FOR THE LAW,  
JUST PUNISHMENT AND DETERRENCE**

17. Mr. Resto Rivera is accountable for a very serious offense, a Carjacking with serious bodily injury. This is very serious offense due to the particular facts of this case.

18. We understand as explained above, that Mr. Resto Rivera, even though

having been involved in this offense, he respectfully requests another chance from this Honorable Court to be able to allow him to better himself by studying, learning a trade and taking drug rehabilitation treatment to return to society at an age that he may still be able to become a productive member of the workforce and do things the correct way.

19. Mr. Resto Rivera got involved in this mess while being a minor and because of having negative influences from the wrong people. While committing these acts he was very immature and has now realized the consequences to his acts. Unfortunately, because of not having the parental control needed, he did wrong and no consequences were perceived by Mr. Resto Rivera for what he had done. As stated above, because of this, he is extraordinarily repentant, and he voluntarily admitted being involved in this incident. This is not an excuse for his act, but the Court should be aware of the particular circumstances of the offense and his willingness to accept responsibility for his actions.

20. "Immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies on the development of the human brain conclude that human brain development may not become complete until the age of twenty-five... [T]he recent [National Institute of Health] report confirms that there is no bold line demarcating at what age a person reaches full maturity. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant." App. 123, n. 2. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

21. Mr. Resto Rivera is a 20-year-old skinny, small young kid. He weighs approximately 150 pounds. He has the face of a child. He does not seem intimidating in any way. His immaturity lead him to commit this crime. He had no idea as to the possible consequences he faced. He never even took the time to think thru the consequences of his

actions. Now he knows for sure. He will be serving time with other inmates who believe in the saying that only the strong survive. Mr. Resto Rivera may have a problem with this saying and with his life in prison.

22. In Koon v. US, 518 US 81 (1996), the Court held that “no abuse of discretion to grant downward departure to police officers convicted of civil rights violation due to their vulnerability in prison. That was done with Police officers; imagine what might happen to an 18-year-old kid.” US v. Booker and Rita v. US, supra, allows this Honorable Court greater discretion to consider this part of the defendant’s circumstances. We are not requesting a downward departure, as it would be a violation of the plea Agreement. We are only arguing that if the Supreme Court took this into consideration, this Honorable Court may also take his young age, fragile body and immaturity into consideration as to the factors needed to properly impose a sentence in this case.

23. In Roper v. Simmons, 125 S. Ct. 1183 (2005) the Supreme Court stated that “today our society views juveniles, in the words Atkins used respecting the mentally retarded, as categorically less culpable than the average criminal... a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions... The susceptibility of juveniles to immature and irresponsible behavior means “*their irresponsible conduct is not as morally reprehensible as that of an adult... the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside*”. Mr. Resto Rivera is a young adult starting his life with an uncertain future that is being

interrupted because of his own mistakes. Life will be a little harder for him than the average person.

### **THE NEED TO PROTECT THE PUBLIC**

24. Due to the particular circumstances, even though it is a serious offense, we understand that Mr. Resto Rivera, because of his young age, can fully rehabilitate and become a productive member of society. He has much to learn and he needs help. We understand that he already has learned his lesson from the acts he has committed. He has been incarcerated for over a year and a half, in which he has suffered a lot for his actions being away from his family and friends, his work and having lost the opportunity to live a free life.

25. As this Honorable Court is aware, it is the purpose of the prison and judiciary systems to rehabilitate the convict for his integration in the society. Mr. Resto Rivera is seriously repentant of his crime and fears being incarcerated more time than necessary. We believe that a lengthy term of imprisonment will be a waste of resources for the Bureau of Prisons and for society if he is not rehabilitated in the system.

### **THE KIND OF SENTENCE AVAILABLE**

26. According to the Plea Agreement, the agreed recommended term of imprisonment for the present case is a term of 109 months, or 9 years and one month of imprisonment. For such a young adult, this is a serious term of imprisonment.

27. We respectfully request this Honorable Court to take all of the above-mentioned facts in consideration pursuant to 18 U.S.C. §3553 (a) while it exercises its discretion by considering the minimum sentence in accordance with the agreed sentence recommendation made between the parties in the plea agreement.

## **CONCLUSION**

28. It is clear that the wrong doing committed by Mr. Resto Rivera is a serious one. It is a crime that affects society but also affects himself and his family. There is no doubt that there should be a degree of punishment as a consequence to the actions committed by the Mr. Resto Rivera; but there should be no doubt that he should be granted an opportunity for rehabilitation and that he be given the opportunity to be back in society as soon as possible. Society's interest in punishing the conduct, in which Mr. Resto Rivera knowingly and willfully incurred, should be reasonable and no greater than necessary to accomplish the goal of sentencing and rehabilitating Mr. Resto Rivera.

**WHEREFORE**, we respectfully request from this Honorable Court to take notice of the above and sentence Mr. Resto Rivera to the terms agreed upon and recommended in the Plea Agreement.

**I HEREBY CERTIFY** that this motion has been filed using the CM/ECF filing system and that a copy of this Motion will be sent to all parties in this case.

**RESPECTFULLY SUBMITTED** in San Juan, Puerto Rico on August 20, 2018.

S/ *Jason Gonzalez Delgado*  
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